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Human Rights and the Impact of Criminalization: Legalizing Homophobia in Jamaica, Nigeria, and Uganda

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On November 1, 2012, two Jamaican men were caught having sex in a bathroom at the University of Technology.¹ While one of the men escaped, the guards brutally attacked the other while an angry mob stood outside watching, shouting anti-gay slurs, and inciting the guards to continue attacking the man.² This is the reaction one would expect in Jamaica as homophobia is deeply ingrained in Jamaica's culture, the famous reggae artists are known for their anti-gay rhetoric, Jamaica has a reputation for being one of the most homophobic places on earth, and with a public opinion poll reporting that eighty-five percent of Jamaicans saying homosexuality should be illegal and eighty-two percent viewing it as morally wrong, Jamaica is no safe haven for same-sex couples.³ Jamaica is not alone in its treatment towards gays; in fact, Nigeria and Uganda are just as unaccepting. Ugandan lawmaker Atim Ogwal Cecilia Barbara suggested a continent-wide ban on homosexuality and even said that all African gay people should be imprisoned for life.⁴ According to a 2010 survey by the Pew Research Center, 89% of Ugandans said homosexuality was morally unacceptable.⁵ When discussing the topic of same-sex marriages, Political Adviser to the Nigerian President, Alhaji Ahmed Gulak, told reporters, "We wish to strongly support the prohibition of same-sex union as an expression both of our cultural values as Nigerians and our religious beliefs as Christians. Far from being a denial of the fundamental right of some Nigerians who would engage in it, such a prohibition protects our society from the

¹ Don Avery, *Gay Jamaican Man Caught Having Sex Brutally Attacked by Guard, Mob*, <http://www.queerty.com/gay-jamaican-man-caught-having-sex-brutally-attacked-by-guard-mob->
² *Id.*

³ Gabrielle Weiss, *Glass Closet: Sex, Stigma and HIV/AIDS in Jamaica*, <http://pulitzercenter.org/projects/caribbean/glass-closet-sex-stigma-and-hiv-aids-jamaica> (last visited Sept. 24, 2012).

⁴ Joe Morgan, *Uganda to Officially Pass 'Kill the Gays' Bill*, <http://www.gaystarnews.com/article/uganda-officially-pass-%E2%80%99kill-gays%E2%80%99-bill121112> (last visited Nov. 30, 2012).

⁵ *Id.*

usurpation of its right to moral health and cultural decency.”⁶ In addition, a Nigerian lawmaker, Zakari Mohammed, in response to President Obama threatening to cut off foreign aid if Nigeria passed its anti-gay bill, commented, “We have a culture. We have religious beliefs and we have a tradition. We are black people. We are not white, and so the U.S. cannot impose its culture on us. Same sex marriage is alien to our culture and we can never give it a chance. So if [Western nations] withhold their aid to us, to hell with them.”⁷ Homophobia runs so deep and strong throughout these three countries that it is legalized through criminal laws. The situation is dire and it is unsafe for homosexuals living in these countries.

General information abounds about the countries that do and do not criminalize homosexuality. There is also a plethora of information available about the laws criminalizing homosexuality in Jamaica, Nigeria, and Uganda. Most of the scholarly articles found discuss Uganda, but in broad terms—the articles discuss the laws, the origins of the laws, and some discuss the international covenants the Ugandan laws contravene. However, the scholarly articles do not address how the laws affect individuals socially, the prevalence of violence, and the increase of HIV/AIDS as a trifecta. This policy paper takes the additional step and argues that the three countries formerly colonized by Britain—Jamaica, Nigeria, and Uganda—should repeal its anti-homosexuality laws because these laws are not only in contravention of international law but also have several harmful effects: (1) they denigrate the social status of the citizens; (2) increase the prevalence of HIV/AIDS; and (3) incite violence against homosexuals. The purpose of this paper is not to just focus on the legal problem but also on the harmful impacts of the laws.

⁶ Matthew Corina, Nigeria’s Anti-Homosexual Laws Also Apply to Tourists, Says Gov’t, <http://global.christianpost.com/news/nigerias-anti-homosexual-laws-also-apply-to-tourists-says-govt-64738/> (last visited Oct. 30, 2012).

⁷ Mfonobong Nsehe, Obama Fights Nigerian Anti-Gay Bill, Threatens To Cut Off Aid, www.forbes.com/sites/mfonobongnsehe/2011/12/09/obama-fights-nigerian-anti-gay-bill-threatens-to-cut-off-aid/ (last visited Oct. 30, 2012).

Part I of this paper will give a detailed overview of these countries' anti-homosexuality laws, including the origin of the laws. In addition, it will discuss how these laws are in contravention of the international treaties all three countries have signed and ratified. Part II will lay out how these laws: (1) affect the social status of the citizens, for example, the loss of jobs, loss of housing, shunned by their families, forced into hiding, and often have to flee their native countries; (2) increase the prevalence of HIV/AIDS (homosexuals cannot be who they are so they often hide who they are, date people of the opposite sex, have unprotected sex, and do not get tested because getting tested is sometimes synonymous to conceding that one is a homosexual); and (3) incite violence because the government is against homosexuality so law enforcement agents become complicit by turning a blind eye, failing to prosecute individuals who commit violent acts against homosexuals, and seemingly allowing others to use violence as a tactic to stop homosexuality. These points will be addressed individually for Jamaica, Nigeria, and Uganda. Part III will discuss a counterargument and show how repealing a law prohibiting homosexuality has changed people's disposition and improved conditions for homosexuals.

I have chosen to write this policy argument focused particularly on the homosexuality laws in Jamaica, Nigeria, and Uganda for several reasons: (1) the staunch difference in policies between the way these countries handle homosexuality compared to how homosexuality is treated in Britain (given that Britain is the origin of their laws and now that Britain no longer criminalizes homosexuality); (2) Britain colonized all three of these countries and their laws criminalizing homosexuality stem from an Indian law passed under British rule known as Section 377;⁸ (3) Africa is known as the most radical continent in terms of how it deals with

⁸ Human Rights Watch, *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism*, December 2008, 1-56432-419-2, available at <http://www.unhcr.org/refworld/docid/494b5e4c2.html> (last visited Oct. 19, 2012).

homosexuality but both Uganda and Nigeria have recently sought laws making homosexual conduct punishable by death;⁹ (4) all three countries are deemed one of the worst places to live as a homosexual; and (5) all three countries are religious and the citizens and governments beliefs regarding homosexuality are heavily influenced by their faith.

I. DISCRIMINATORY LAWS

As stated above, these laws are all discriminatory and have the effect of legalizing homophobia. Britain colonized all three of these countries, and imposed their culture, norms, and anti-buggery laws in each of these nations. However, in 2012, the United Kingdom bans all anti-gay discrimination and the European Union law protects people from discrimination based on sexual orientation.¹⁰ This section discusses the discriminatory laws and punishments of Jamaica, Nigeria, and Uganda.

a. Overview of Jamaica's Laws Criminalizing Homosexual Conduct

Jamaica has an anti-sodomy law known at Article 76 of the Offences of Against The Person Act that makes the act of “buggery” punishable by hard labor and imprisonment for a maximum of ten years.¹¹ Article 77 punishes the attempt of buggery with up to seven years imprisonment with or without hard labor.¹² Human Rights Watch defines buggery as anal intercourse or bestiality but it does not require force for it to be an offense.¹³ Consequently, these

⁹ Sarah K. Mazzochi, *The Great Debate: Lessons to be Learned from an International Comparative Analysis on Same-Sex Marriage*, 16 ROGER WILLIAMS U. L. REV. 577 (2011).

¹⁰ What is the current legal situation in the EU? http://www.ilga-europe.org/home/how_we_work/european_institutions/anti_discrimination_law/current_legal_situation (last visited Nov. 23, 2012).

¹¹ Micah Fink, A Challenge to Jamaica's Anti-Sodomy Law, <http://pulitzercenter.org/reporting/jamaica-gay-criminalization-anti-sodomy-law-homophobia-aids-free-world> (last visited Oct. 30, 2012) [hereinafter Pulitzer Center].

¹² Jamaica: Laws regarding homosexuality; applicable penalties and whether they are enforced <http://www.unhcr.org/refworld/publisher,IRBC,,JAM,45f1475a2,0.html>

¹³ *Id.*

laws criminalize consensual intercourse between men. Article 79 punishes gross indecency between two men, regardless of whether it occurs in public or private with two years imprisonment with or without hard labor.¹⁴ The anti-buggery law originates from 1876 when British colonized Jamaica.¹⁵

b. Nigeria's Laws Criminalizing Homosexual Conduct and the Pending Law Prohibiting Same-Sex Marriage

Nigeria banned homosexuality since the British colonized it.¹⁶ Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990 §§ 214, 215, 217 makes it a felony punishable for fourteen years imprisonment for any person who has “carnal knowledge of any person against the order of nature” or any animal, or allows another person to have carnal knowledge of him or her.”¹⁷ § 217 specifically states, “any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years.”¹⁸ Twelve states in North Nigeria adopted the Islamic Shariah laws criminalizing same-sex activities with the maximum penalty for between men is the death penalty and for women it is whipping and/or imprisonment.¹⁹ These laws are adopted in: Bauchi (the year 2001), Borno (2000), Gombe (2001),

¹⁴ *Id.*

¹⁵ Fink, *supra* note 11.

¹⁶ Jon Gambrell, Nigeria Anti-Gay Marriage Bill Approved By Senate, <http://www.huffingtonpost.com/2011/11/22/nigeria-anti-gay-marriage> (last visited Sept. 24, 2012).

¹⁷ Int'l Lesbian and Gay Ass'n, <http://www.ilga.org/ilga/en/countries/NIGERIA/law> (last visited Sept. 24, 2012) [hereinafter Int'l Lesbian and Gay Ass'n].

¹⁸ *Id.*

¹⁹ Int'l Lesbian and Gay Ass'n, *supra* note 17.

Jigawa (2000), Kaduna (2001), Kano (2000), Katsina (2000), Kebbi (2000), Niger (2000), Sokoto (2000), Yobe (2001) and Zamfara (2000).²⁰

In November 2011, Nigeria's Senate voted to criminalize gay marriage, gay advocacy, and same-sex displays of affection.²¹ Once the House of Representatives pass it and President Goodluck Jonathan signs it, it will become law and "couples who marry could face up to 14 years each in prison. Witnesses or anyone who helps couples marry could be sentenced to 10 years behind bars."²²

c. Uganda's Law Outlawing Homosexual Conduct and the Pending Anti-Homosexuality Bill

Uganda's Penal Code Act of 1950 (Chapter 120) §§ 145, 146, and 148 is similar to Nigeria's laws criminalizing homosexual acts. §§ 145-146 makes it a felony punishable by seven years to anyone who "has carnal knowledge of any person against the order of nature, has carnal knowledge of any animal, or if a person allows a male to have carnal knowledge of him or her against the order of nature, commits an offence and is liable for imprisonment for life."²³ Uganda's constitution also expressly prohibits marriage between persons of the same sex.²⁴

Additionally, in 2009, the Ugandan Senate passed the Anti-Homosexuality Bill, which would have the effect of intensifying the laws against homosexuals in the country. In order to become a law, it needed to be passed by the House of Representatives and signed by President Museveni. It appears that international opposition has prevented the bill from becoming a law

²⁰ Lucas Paoli Itaborahy, Int'l Gay & Lesbian Ass'n State Sponsored Homophobia Report, at 34 (May 2012), *available at* <http://ilga.org/ilga/en/article/1161>.

²¹ Jon Gambrell, *supra* note 16.

²² *Id.*

²³ Itaborahy, *supra* note 20.

²⁴ *Id.*

thus far.²⁵ However, in February 2012, the anti-gay bill was reintroduced by parliament sans the death penalty provision, a punishment for certain homosexual acts.²⁶ The Ugandan Parliament Speaker, Rebecca Kadaga is committed to passing the anti-homosexuality bill by the end of the year.²⁷

The law will further criminalize homosexuality by dividing it into two categories: (1) aggravated homosexuality and (2) the offense of homosexuality.²⁸ “Aggravated homosexuality is defined as gay acts committed by parents or authority figures, HIV-positive people, pedophiles and repeat offenders. The offense of homosexuality includes same-sex sexual acts or being in a gay relationship, and will be prosecuted by life imprisonment. The bill will “prohibit and penalize homosexual behavior and related practices in Uganda as they constitute a threat to the traditional family.”²⁹ “Related practices” is open to interpretation and includes “touching with the intent to commit a homosexual act” and advocacy or a failure to report offenses by anyone including medical staff, counselors, priests and pastors, employers and family members, are subject to a fine and three years in prison.³⁰ In addition, this bill allows “victims to kill anyone they claim has committed a homosexual offense against them.”³¹

In all three countries, homosexual conduct and same-sex marriage are ostensibly linked. Homosexual conduct is outlawed and as a result, homosexuals cannot get married in any of these

²⁵ *Id.*

²⁶ Lillian Rizzo, Uganda: Anti-gay Bill Reintroduced in Parliament, <http://www.globalpost.com/dispatch/news/regions/africa/120207/uganda-anti-gay-bill-reintroduced-parliament> (last visited Oct. 1, 2012).

²⁷ Sokari Elaine, Uganda Will Pass Anti-Homosexuality Bill This Year, Says Speaker, <http://www.guardian.co.uk/world/2012/nov/26/uganda-anti-homosexuality-bill> (last visited Nov. 30, 2012).

²⁸ Morgan, *supra* note 4.

²⁹ Elaine, *supra* note 27.

³⁰ *Id.*

³¹ *Id.*

countries. Thus, whether it is the homosexual conduct or same-sex marriage, the treatment is the same. Of these three countries discussed, only Nigeria has put forward legislation to expressly prohibit same-sex marriages and any form of gay advocacy while Uganda expressly prohibits same-sex marriage in its constitution. As a result, in this paper, homosexual conduct and same-sex marriage may be used reciprocally.

II. THE LAWS OF ALL THREE COUNTRIES VIOLATE INTERNATIONAL HUMAN RIGHTS LAWS BECAUSE THE HUMAN RIGHTS COUNCIL AND COMMITTEE INTERPRETS SEXUAL ORIENTATION AND GENDER IDENTITY AS PERSONS ENTITLED TO EQUAL PROTECTION OF THE LAW

Since Jamaica, Nigeria, and Uganda all signed the International Covenant on Civil and Political Rights (ICCPR), this section will discuss the ICCPR and state how the laws of these countries contravene the ICCPR. The ICCPR is a core human rights document that govern the way citizens of the member-countries are supposed to be treated by their respective governments.

The American Civil Liberties Union (ACLU) described these covenants as:

The ICCPR is a key international human rights treaty, providing a range of protections for civil and political rights. The ICCPR, together with the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, are considered the International Bill of Human Rights. The ICCPR obligates countries who have ratified the treaty to protect and preserve basic human rights such as the right to life and to human dignity, equality before the law, freedom of speech, assembly and association, religious freedom and privacy, freedom from torture, ill-treatment and arbitrary detention, gender equality, fair trial and minority rights. The Covenant compels governments to take administrative, judicial and legislative measures in order to protect the rights enshrined in the treaty and provide an effective remedy. The Covenant was adopted by the U.N. General Assembly in 1966 and went into force in 1976. As of August 2012, 167 countries have ratified the Covenant.³²

³² American Civil Liberties Union, <http://www.aclu.org/human-rights/faq-covenant-civil-political-rights-iccpr> (last visited Oct. 30, 2012).

Article 2.1 of the ICCPR states “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, [sic] sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (emphasis added).³³ Article 26 of the ICCPR states “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, [sic] sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (emphasis added).³⁴

While a direct reading of Article 2.1 and 26 of the ICCPR do not explicitly give protection to homosexual conduct or homosexuals, in *Toonen v. Australia*, the Human Rights Commission stated the reference to “sex” in these two articles include discrimination on the basis of sexual orientation.³⁵ In addition, Navanethem Pillay’s,³⁶ United Nations High Commissioner for Human Rights, September 17, 2010 speech she spoke about ending violence and criminal sanctions based on sexual orientation and gender identity. In this speech, she mentioned the General Assembly’s Resolution 60/251,³⁷ which established the Human Rights Council entrusted to “promote ‘Universal respect for the protection of all human rights and fundamental freedoms

³³ See ICCPR, available at <http://www2.ohchr.org/english/law/ccpr.htm#art17>.

³⁴ *Id.*

³⁵ *Toonen v. Australia*, U.N. Human Rights Comm., Comm’n. No. 488/1992, ¶ 8.7, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

³⁶ Navanethem Pillay <http://www.ohchr.org/EN/AboutUs/Pages/HighCommissioner.aspx>.

³⁷ Jamaica, Nigeria, and Uganda are all member states of the United Nations. The General Assembly is comprised of all 193 Members of the United Nations, <http://www.un.org/en/members/> (last visited Oct. 1, 2012).

for all, without distinction of any kind and in a fair and equal manner.”³⁸ Ms. Pillay also referenced Article 1 and 2 of the Universal Declaration that states, “All human being are born free and equal in dignity and rights” and “everyone is entitled to all the rights and freedoms set forth in the Declaration,” respectively, to conclude that it is unacceptable to impose criminal sanctions on individuals who do not inflict harms on others or pose a threat, but on individuals who are just “born with a particular sexual orientation or gender identity.”³⁹ While Commissioner Pillay conceded that various international treaties might not explicitly refer to violations against individuals based on sexual orientation and gender identity, she insisted the inclusiveness is present in the language of the treaties.

The Human Rights Commission has taken a clear stance on making it clear to all of its member-countries that sexual orientation and gender identity is a serious issue that it does not take lightly. During the HRC’s Seventeenth Session in 2011, it expressed grave concern at the acts of violence and discrimination against people in regions across the world because of their sexual orientation and gender identity. This session alone demonstrated that violence against homosexuals is seen as a human rights violation despite any explicit language in core human rights documents including “everyone should be entitled to all the rights and freedoms without any distinction of any kind, such as sexual orientation and gender identity.” Moreover, the HRC

³⁸ Navanethem Pillay, United Nations High Commissioner for Human Rights, Remarks to a High Level Panel in Geneva on Ending Violence and Criminal Sanctions on the Basis of Sexual Orientation and Gender Identity (Sep. 17, 2010), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10717&LangID=E> (last visited Sept. 24, 2012).

³⁹ *Id.*

reaffirmed its commitment to LGBT issues through Resolution 17/19, entitled Human rights, sexual orientation and gender identity.⁴⁰

In Commissioner Pillay's November 2011 study on the discriminatory laws and practices and acts of violence against individuals based on their sexual orientations and gender identity, she stated:

The application of international human rights law is guided by the principles of Universality and non-discrimination enshrined in article 1 of the Universal Declaration of Human Rights which states 'all human beings are born free and equal in dignity and rights.' All people, including lesbian, gay, bisexual and transgender (LGBT) persons, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right of freedom of expression, association and peaceful assembly.⁴¹

Moreover, Ms. Pillay went on to say the grounds of discrimination listed in the ICCPR and other human rights treaties are not exhaustive and grounds of other discrimination were intentionally left open by using the phrase, "other status."⁴² In the 1994 *Toonen v. Australia* case, the Human Rights Committee held that its member states are "obligated to protect individuals from discrimination on the basis of their sexual orientation," the committee found that adult consensual activity in private is covered by the concept of 'privacy' under the ICCPR, and "laws used to criminalize private, adult, consensual same-sex relations violate rights to privacy and non-discrimination."⁴³ Moreover, "The Committee has rejected the argument that criminalization may be justified as "reasonable on grounds of protection of public health or morals, noting that

⁴⁰ U.N. Human Rights Council, Resolution 17/19, *Human rights, sexual orientation and gender identity*, U.N. Doc. A/HRC/17/L.9/Rev.1 (June 17, 2011).

⁴¹ U.N. Human Rights Council, Report 19/41, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011) [hereinafter U.N. Report 19/41].

⁴² *Id.*

⁴³ *Id.*

the use of criminal law in such circumstances is neither necessary nor proportionate.”⁴⁴ Based on Ms. Pillay’s speech, her study, and The Committee’s holding in *Toonen v. Australia*, the ICCPR protects homosexuals. However, the laws of Jamaica, Nigeria, and Uganda contravene this core human rights treaty and fails to live up to its obligations under the treaty by simply having laws that criminalize homosexuality.

Not only are these laws in contravention of international treaties, but these laws have grave effects on the homosexuals who live in these countries. Eradicating these homophobic laws are not dispositive and it will not solve all of the problems homosexuals who reside in these countries face; however, it is the first step in the right direction which will then encourage and legally allow homosexuals to be who they are, live without fear, seek and receive the services they need in order to live normal and successful lives. As long as these laws are in place and the government are promulgating anti-gay discourse, allowing their authorities to harm homosexuals, and pretending they do not exist, the longer the homosexuals will be driven underground, in hiding, or the cliché term—in the closet.

III. HOW THE ANTI-HOMOSEXUALITY LAWS AFFECT JAMAICAN CITIZENS

a. Jamaica’s Culture is Socially Intolerant of Homosexuals Which Leads to a Degradation of the Quality of Life of Jamaican Homosexuals

This section will discuss how the Jamaican laws prohibiting homosexuality affects Jamaican citizens on a social level by closely examining popular song lyrics and how the use of these songs by the government illuminates the issues and stigmas associated to LGBT status in Jamaica.

⁴⁴ U.N. Report 19/41, *supra* note 41.

Jamaican culture abhors homosexuality so much that being a homosexual is a social death sentence—literally. Once a person is labeled anything besides a heterosexual, the implications that may follow may strip the person of his/her livelihood and may force them to flee their homes. Moreover, the disdain is pervasive in the popular music and it is infused in politics.

Maurice Tomlinson is a Jamaican lawyer and gay activist who receives death threats not only because of his sexual preference, but also because he is a gay rights activist.⁴⁵ However, once he married his husband, he was forced to flee to Canada due to the death threats⁴⁶ and the Jamaican government never responded to the Inter-American Commission on Human Rights about what measures would be taken to guarantee his safety in Jamaica.⁴⁷ While Tomlinson had to leave his native land to be safe, there are others who are questionably gay or bisexual who are unable to leave, that are publicly ridiculed which causes them their jobs, homes, and family. In 2009, John Terry, British honorary consul, was found dead after being strangled and beaten. His murderer(s) left a note on his body saying, “This is what will happen to all gays.”⁴⁸ In 2002, the United Kingdom granted asylum to two gay Jamaican men because “their lives were in danger from ‘severe homophobia’ in the Caribbean.”⁴⁹

⁴⁵ Maurice Tomlinson, Violent Prejudice Against Jamaica’s Gay People Must Stop, <http://www.guardian.co.uk/commentisfree/2012/jan/27/violent-prejudice-jamaica-gay-people>

⁴⁶ Candiese Leveridge, I Tried Not To Be Gay By Getting Married, <http://m.jamaicaobserver.com/mobile/news/-I-tried-not-to-be-gay-by-getting-married----> Tomlinson (last visited Oct. 20, 2012).

⁴⁷ Maurice Tomlinson, *supra* note 45.

⁴⁸ Owen Bowcott & Maya Wolfe-Robinson, Gay Jamaicans Launch Legal Action Over Island’s Homophobic Laws, <http://m.guardiannews.com/ms/p/gnm/us/view.m?id=15&gid=/world/2012/oct/26/jamaica-gay-rights-homophobic-laws&cat=world#.UI0hj3H-nTg.mailto> (last visited Oct. 26 2012).

⁴⁹ *Id.*

Jamaica's dancehall music adds fuel to the anti-homophobic discourse. At first listen, one may be sucked into the enticing "riddims" and provocative beats. Dancehall became popular in Jamaica in the 1970s,⁵⁰ but it recently began to receive criticism due to its homophobic content and its lyrics advocating for torture, torment, and extermination of gays. For example, in Buju Banton's popular "Boom Bye Bye" he says, "Boom bye bye / inna batty bwoy head / Rude bwoy no promote no nasty man / dem haffi dead" which translates to, "Boom [the sound of a gunshot], bye-bye, in a faggot's head / the tough young guys don't accept fags; they have to die."⁵¹ A popular dancehall group in Jamaica, T.O.K., has a song called "Chi Chi Man."⁵² This song celebrates the burning and killing of gay men.⁵³ Specifically, they say, "From dem a par inna chi chi man car / Blaze di fire mek we bun dem! From dem a drink inna chi chi man bar / Blaze di fire mek we dun dem!" This translates to, "Those who gather in a fag's car / Blaze the fire, let's burn them! Those who drink in a fag bar / Blaze the fire, let's kill them!"⁵⁴ In addition, a popular artist, Elephant Man has a song called "Log On" with the anti-gay lyrics, "Log on, and step pon chi chi man / Log on from yu know seh yu nuh ickie man./ Log on and step pon chi chi man /Dance wi a dance and a bun out a freaky man."⁵⁵ In this song, Elephant Man basically wants all heterosexuals to kick and stomp out all homosexuals. These song lyrics alone undeniably corroborate the sentiments of the over eighty percent of Jamaican population who have

⁵⁰ Chris Keane, History of Dancehall Music, <http://www.dubandreggae.com/dancehall/history-of-dancehall-music> (last visited Sept. 20, 2012).

⁵¹ Leah Nelson, Jamaica's Anti-Gay 'Murder Music' Carries Violent Message, <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/winter/harmonies-of-hate> (last visited Oct. 10, 2012).

⁵² "Chi Chi Man" is a derogatory term for gays in Jamaican patois.

⁵³ Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica: A Shadow Report (Oct. 2011)

⁵⁴ Leah Nelson, *supra* note 51.

⁵⁵ *Id.*

homophobic sentiments. While these are only three songs, a plethora of reggae songs promulgate anti-homosexual discourse, which further instills homophobia and hatred towards gays.

Dancehall music is so ingrained in Jamaican culture and society that even the prospective political leaders and the government endorse and encourage violence and discrimination against homosexuals through its propagation of homophobic speech. The Jamaican Labour Party's theme in 2001 was T.O.K.'s song, "Chi Chi Man," and the People's National Party used the slogan "Log On to Progress" which referenced Elephant Man's "Log On" song to garner votes for the 2002 Jamaican elections.⁵⁶ The fact that the government and prospective politicians are using explicitly homophobic songs for campaign slogans sheds light on how intolerant Jamaicans are and the issues facing the LGBT community.

b. Jamaica's Homophobic Laws Contribute to Increasing HIV/AIDS Rates

With HIV/AIDS rates on the rise, this section will discuss the connections between LGBT individuals and HIV/AIDS, including the discrepancy between the statistics reported and the reasons for inconsistencies.

The Human Rights Watch (HRW) went on a three-week field trip to Jamaica in June 2004 and conducted interviews with over seventy-five individuals who were living with or at high-risk for HIV/AIDS. Based on their interviews, prior and subsequent research, they compiled a report "Hated to Death." In 2004, 67.8% of AIDS cases were attributed to heterosexual sex and 5.4% to homosexual and bisexual sex combined.⁵⁷ The Ministry of Health said the percentage of HIV acquired through homosexual conduct, specifically men having sex with other men, were probably higher but since homosexual sex is illegal in Jamaica and the stigma and discrimination

⁵⁶ Leah Nelson, *supra* note 51.

⁵⁷ Human Rights Report *Hated to Death: Violence, and Jamaica's HIV/AIDS Epidemic*, at 9-11(2004), available at www.hrw.org/reports/2004/jamaica1104/jamaica1104.pdf. [hereinafter Human Rights Report].

attached to homosexuality, many men were unwilling to disclose having sex with other men. However, in 2010, 43% of the men reported with HIV and 41% reported with AIDS were unknown due to the unwillingness of men who engage in homosexual conduct to disclose it and inadequate investigation.⁵⁸ Out of the 43%, 4% did identify as bisexual and 3.5% identified as homosexual.⁵⁹ From 2004 to 2010, there was 2.1% increase in the individuals who were willing to admit they had engaged in homosexual sex. However, there is a serious discrepancy in the numbers reported because in a July 2012 speech given by Maurice Tomlinson, he said the country's anti-gay animus and laws were why 32% of males who have sex with males have HIV compared to 1.6% of the population.⁶⁰

Despite studies showing that HIV/AIDS is contracted mostly through heterosexual sex, in Jamaica, HIV/AIDS is ostensibly linked to homosexual conduct. For example, AIDS outreach workers reported that when they tried to provide people with information about HIV, they'll often hear, "HIV does not concern them, because it is a battyman [homosexual] disease."⁶¹ This link, stigma, discrimination, and illegality of homosexual conduct, marginalizes individuals who engaged in homosexual acts, forces them to remain invisible, and prevents them from seeking information and services related to HIV. On top of this, the Ministry of Health conceded that Jamaica's sodomy laws place barriers on HIV services to men who have sex with men.⁶² Not only this but the laws and the stigma makes it difficult for men to acquire the protection they need. For example, condoms are not given out in prisons after there was a riot which killed

⁵⁸ Ministry of Health National HIV/STI Programme Jamaica HIV Epidemic Update (January to December 2010) page 7.

⁵⁹ *Id.*

⁶⁰ Maurice Tomlinson, Remarks at the Release of the Report of the Global Commission on HIV and the Law Countdown to Tolerance (July 9, 2012), <http://www.aidsfreeworld.org/Publications-Multimedia/Countdown-to-Tolerance/2012/July/Remarks.aspx>.

⁶¹ Human Rights Report, *supra* note 57, at 14.

⁶² Human Rights Report, *supra* note at 57, at 13-14.

seventeen people and the Commissioner of Prisons was advised “that distributing condoms would be aiding and abetting illegal activity.”⁶³ Maurice Tomlinson also stated that he has to buy condoms and lubricant for his gay friends and his female friends would also buy condoms for gay friends because the gay friends had a fear of being “out.”⁶⁴ In addition, because people lack knowledge about the disease and how it is contracted and spread, people who are living with HIV/AIDS and denied transportation to get treatment and services.

The fear of being labeled a homosexual is so grave that Jamaican men often live double lives; they date, have sex, have children, and marry women while concomitantly have sex with other men.⁶⁵ Women who have sex with women also have sex with men because Jamaican women are pressured to build relationships with men and have children as a way to establish their identity as women.⁶⁶ Being uninformed about HIV/AIDS, while having sex with members of both sex, coupled with being too afraid to seek information or services because of the stigma all contribute to the increasing HIV/AIDS rates in Jamaica. Once the stigma is removed, there’s a great chance that it will have a domino effect on HIV/AIDS rates. However, first the laws must be repealed to allow for tolerance and/or acceptance.

c. Violence in Jamaica is Rampant because the Jamaican Government Does Not Offer Protection to LGBT Individuals

Violence against LGBT individuals is addressed and examined in this section—from regular citizens brutally attacking people thought to be and those who identify as homosexuals to the local police force who fail to protect LGBT individuals from harm or even cause them harm.

⁶³ Maurice Tomlinson, *supra* note at 60.

⁶⁴ *Id.*

⁶⁵ Human Rights Report, *supra* note at 57, at 14.

⁶⁶ *Id.* at 15.

There is also a direct link between HIV/AIDS and violence. The World Health Organization (WHO) identified sexual violence against girls and women as an important factor contributing to increased HIV rates among women in Jamaica.⁶⁷ Women and girls who are suspected of being lesbians are at a greater risk for rape and are often targeted as a result; rape attributes to HIV rates because “when the vagina or anus is dry and force is used, genital and anal injuries are more likely, increasing the risk of HIV transmission.”⁶⁸

In addition to sexual violence, the repugnance of homosexuality causes citizens to take it upon themselves to remedy the “homosexual problem” by mob attacks. Local government enforcement officials (the Jamaican Constabulary Force) either condone the attacks on homosexuals or corroborate with the vigilantes. In fact, Jamaica becomes a lawless nation for homosexuals because the laws are antithetical to their lifestyle and the law enforcement officials who are supposed to protect them from harm are unwilling to do so. In addition, the police who are frequent violators are not held accountable for their actions. J-FLAG, an organization promoting human rights of LGBT individuals, received seventeen reports of homophobic incidents perpetrated by police between January 2009 and August 2011.⁶⁹ When Constable Michael Hayden, a police officer, reported that his colleagues stole his personal property and those other officers made him feel uncomfortable, his supervisors failed to take actions to remedy the situation.⁷⁰

The three following examples help to demonstrate the violence that occurs far too often in Jamaica. An angry mob appeared at a gay twenty-two-year-old man’s rented house in

⁶⁷ Human Rights Report, *supra* note at 57, at 15.

⁶⁸ *Id.*

⁶⁹ Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica: A Shadow Report (Oct. 2011).

⁷⁰ *Id.*

Mandeville with machetes, sticks, and knives, yelled anti-gay slurs, kicked down the front door, and pummeled him.⁷¹ Though he did not die from the attack, his hand was covered in bandages, his skull was cut deeply, and his ear was sliced in half, horizontally.⁷² Andre has since fled Mandeville and is trying to become attracted to women to prevent being attacked again.⁷³ The largest daily Jamaican newspaper, The Gleaner, reported in February 2011 a raid of the only gay club in Montego Bay where twenty heavily armed police officers, “jumped from the vehicles, aggressively accosting patrons, kicking in doors, beating and pistol-whipping indiscriminately, and chasing everyone from the venue” in addition, “the officers hurled homophobic slurs which encouraged patrons of other clubs nearby to join in the melee by throwing bottles, stones and other missiles as individuals fled for their lives.”⁷⁴ In February 2008, the police officer Michael Hayden mentioned above, disclosed his sexual orientation to a local tabloid, The Jamaica Star, and has since taken a leave from the force and has gone into hiding out of fear that his colleagues would kill him.⁷⁵ Moreover, Maurice Tomlinson reported in January of this year, “Vigilante attacks against gay men are common – at least 35 people have been murdered because of their sexuality since 1997. In 2011, two men were hacked to death because they were gay. The latest victim was a 16-year-old youth chopped to death in his home by early morning invaders because of his “questionable relations” with another man.”⁷⁶

⁷¹ Marc Lacey, Anti-gay Violence Defies Laid-back Image of Jamaica, http://www.nytimes.com/2008/02/24/world/americas/24iht-jamaica.1.10331900.html?pagewanted=all&_r=0 (last visited Oct. 10, 2012).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Maurice Tomlinson, Brutality Against MoBay Gays, <http://jamaica-gleaner.com/gleaner/20110225/letters/letters5.html> (last visited Sept. 24, 2012).

⁷⁵ Marc Lacey, *supra* note at 71.

⁷⁶ Maurice Tomlinson, *supra* note at 45.

All of these brutal attacks against LGBT individuals and the lack of justice brought to their attackers further shows that the climate in Jamaica regarding homosexuality is far from halcyonic. Jamaican LGBT individuals lack protection not only from their government but from local police forces who either turn their backs on them and refuse to protect them but often attack them as well.

IV. HOW NIGERIA’S LAWS FORBIDDING HOMOSEXUAL CONDUCT AFFECTS ITS CITIZENS

a. Being a Homosexual is Social Suicide

Nigeria, just like Uganda and Jamaica, is a religious country. The religious aspect is one of the main reasons for why homosexuality is rejected in Nigeria. This section looks at how being touted as a homosexual brings in death threats and at one point, forced the only church in Nigeria where LGBT individuals were allowed to worship to close due to how the attendees and the pastor were treated.

While this is not unique to Nigeria, “[m]any Nigerians are convinced that homosexuality is ‘of the devil,’ against our ‘culture’ and an encroachment of ‘sad Western values.’ A young man recently tweeted that ‘homosexuality is the cause of the present rot in America.’”⁷⁷ This ties into social issues because Nigerians believe that homosexuality does not occur in their country, and if there is any suspicion of homosexuality, extreme measures are taken to rectify the situation—measures that usually end negatively for those suspected to be homosexuals.

Ifeanyi Kelly Orazulike, a Nigerian openly gay rights activist expressed how openness comes at a steep price—he’s been attacked, been beaten up, received death threats, gotten his

⁷⁷ Chude Jideonwo, Why Nigeria’s Anti-Gay Bill Sickens Me, <http://www.cnn.com/2011/12/01/world/africa/nigeria-anti-gay-bill/index.html> (last visited Nov. 5, 2012).

head broken, and has to keep the location of his office a closely guarded secret.⁷⁸ After the House of Representatives passed the bill imprisoning anyone aiding and abetting same-sex marriage last year (though it still needs to be passed by the Senate and signed by the president), Ifeanyi protested outside of the Nigerian embassy in New York City, only to receive threats warning him to never return home.⁷⁹ When he did, a group of men shouted at him, “that homosexual!” and hit him on his head that he had to shave off some of his hair to get it treated.⁸⁰ The House of Rainbow, a church in Nigeria that openly accepted homosexual worshippers and was run by a gay pastor, closed in 2008 because worshippers were beaten as they left church services and pastor received death threats and fled the country after a newspaper published a story about the church.⁸¹ This is a big deal because Nigeria is a religious country, gays are ostracized, and have no place to worship. In addition, openly gay or those even suspected to be gay are fired from their jobs and thrown out of their family homes.⁸² While these stories are negative, should the senate and president pass the proposed new law, gays and non-gays will be ostracized even more.

b. HIV/AIDS Rates are Increasing

Nigeria, unlike Jamaica and Uganda, is less forthcoming with their information concerning homosexuals and HIV/AIDS rates. As a result, this section addresses how

⁷⁸ Heather Murdock, Nigeria: Where Being Openly Gay Comes At a Steep Price, <http://www.globalpost.com/dispatch/news/regions/africa/nigeria/120802/nigeria-gay-rights-goodluck-jonathan-hiv-aids> (last visited Oct. 25, 2012).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Heather Murdock, Nigerian Gay Rights Activists Calls for Dignity, Acceptance, http://www.voanews.com/content/nigerian-gay_rights_activists_call_for_dignity_acceptance/1441447.html (last visited Oct. 25, 2012).

homosexuals and the HIV/AIDS rate can be affected if the new law criminalizing gay marriage, gay advocacy, and same-sex displays of affection is passed.

The new law, if passed, will definitely affect the HIV/AIDS rate among gays. It explicitly prevents people from participating in a gay organization. Thus, it can be applied broadly and any organization set up to help gays or provide services for gays can be scrutinized and the employees imprisoned. Orazulike strongly believes, "Human rights violations of sexual minorities would increase," he says. "The prevalence rate of HIV infection would also increase because people would no longer comfortable to come out to access services and it would drive people underground."⁸³ Population Council of Nigeria, a research organization shows that gay men in Nigeria are more than five times likelier to be infected with HIV than are heterosexuals.⁸⁴ Consequently, "The bill will be harmful to the health and access of services that many of the country's most vulnerable citizens need... Men having sex with men are already concerned about getting tested or even discussing HIV/AIDS prevention because of the stigma and discrimination involved," stated Kunle Williams of the Population Council.⁸⁵ With existing problems with homosexuals and the HIV/AIDS rate, Nigeria cannot afford to implement a new law that directly target the same demographic which will only exacerbate the problem.

c. Homosexuals Become Instant Targets for Violence

The Nigerian LGBT community is under attack and is not protected by the government or their fellow civilians. This section addresses the violence homosexuals in Nigeria face on a daily basis.

⁸³ Murdock, *supra* note at 82.

⁸⁴ G.P., Until Death Do Us Part, THE ECONOMIST (Dec. 9, 2011, 12:04 PM), <http://www.economist.com/blogs/baobab/2011/12/gay-marriage-nigeria> (last visited Oct. 27, 2012).

⁸⁵ *Id.*

Being identified and labeled as a homosexual does not only make homosexuals pariahs, but it lends the to violent attacks. For example, when John Adeniyi, human rights activist for the International Center for Advocacy on Rights to Health, identified himself as a homosexual in front of Nigerian legislators who said homosexuals did not need protection because they were non-existent in Nigeria, he was later beaten up and robbed. Adeniyi also relayed the story of a sixty-year-old gay man who was beaten to death on the streets during the spring of 2012.⁸⁶ John Colnbrook, a gay Nigerian who went to study in the United Kingdom is currently scheduled to be deported to Nigeria but is seeking asylum because he fears he will face persecution and physical attack should he return.⁸⁷ In fact, he said he prefers to die instead of returning to his native land.⁸⁸ Rashidi Williams, a twenty-five-year-old gay man, was beaten up by a gang of people in Lagos in 2011 but was afraid to report the attack to his family or police given the pending anti-gay legislation.⁸⁹

These stories of LGBT individuals being attacked or even being afraid to come back to his homeland because of what may happen illuminate the open violence and prejudice against Nigerian homosexuals. There is a causal relationship between the laws implemented, those pending, and the anti-homosexual propaganda disseminated by the government that results in homosexuals being targeted, fearing their lives, beaten, killed, and robbed. Reverse all of this and change may come.

⁸⁶ Heather Murdock, *supra* note at 82.

⁸⁷ Tris Reid-Smith, Nigerian Gay Asylum Seeker Set to be Sent Home UK, <http://www.gaystarnews.com/article/nigerian-gay-asylum-seeker-set-be-sent-home-uk060312> (last visited Oct. 28, 2012).

⁸⁸ *Id.*

⁸⁹ Linda Ikeji, A Gay Nigerian Man's Tale, <http://lindaiekeji.blogspot.com/search?q=Rashidi+Williams>, (last visited Nov. 5, 2012).

V. THE DIRE AFFECTS OF UGANDA’S LAWS PROHIBITING HOMOSEXUAL CONDUCT

a. The Ugandan Laws are Used as Tools of Social Control, Power, and Division

This section examines how the anti-homosexuality laws are being used as tools of social control, power, and division by looking at how sexuality has ostracized Ugandans, unfairly forced them in the public eye, and how their sexuality becomes a Catch-22 situation—homosexuals may not want to stay in Uganda but they may not have a place to flee either.

On the social front, Uganda is not much different from Jamaica; the Human Rights First organization stated, “[m]edia outlets routinely publicize the names and pictures of [Lesbian Gay Bisexual Transgender Intersex] LGBTI individuals, causing them to lose their jobs, places of residence, and family support, and even making them possible targets of mob violence.”⁹⁰ For example, in October 2010, Uganda’s Rolling Stone tabloid magazine (unaffiliated with America’s Rolling Stone magazine) published a list of 100 prominent Ugandan gays, their names and addresses, and a yellow label inciting people to “Hang Them.”⁹¹ At least four of the men listed have been attacked and others have gone into hiding.⁹² The situation is so dire in Uganda that Freedom and Roam Uganda (FARUG) was formed in 2003 by a group of full-fledged lesbians “who were constantly harassed, insulted and discriminated against by a misinformed society and who were touched by the plight of their sisters and brothers of the same sexual

⁹⁰ Communities Under Siege: LGBTI Rights Abuses in Uganda
<http://www.humanrightsfirst.org/about-us/> (last visited Oct. 10, 2012) [hereinafter Human Rights First].

⁹¹ Chris Rovzar, Ugandan Newspaper Publishes Names of ‘Top 100’ Homosexuals, Calls for Their Hanging, available at http://nymag.com/daily/intel/2010/10/ugandan_newspaper_publishes_na.html (last visited Oct. 24, 2012).

⁹² *Id.*

orientation.”⁹³ In the report FARUG compiled in conjunction with the International Gay and Lesbian Human Rights Commission (IGLHRC), the FARUG women who identify themselves as kuchu (a self-identifying term used by the LGBT community in Uganda) say they have been “dismissed from our families, homes, schools, jobs, churches, and hospitals...taunted and attacked physically on the streets, in our homes, in churches, and in all social places. We do not get the medical care we require because of discrimination and ignorance of our health needs.”⁹⁴

In Jamaica, Maurice Tomlinson fled to Canada after his marriage due to the increasing number of death threats he received. At least he was able to flee. For Ugandans, the violence and abuse they face is often intolerable and they want to flee. However, a big question they face is—where to flee? Many of the neighboring countries also criminalize homosexuality so Ugandan homosexuals have little relief. If they choose to flee and seek asylum in other countries, they run the risk of facing further prosecution.⁹⁵ Some refugees go to the Democratic Republic of Congo but remain underground and do not ask for protection or assistance.⁹⁶ The LGBTI refugees and those associated with them are often threatened, beaten, raped, and possibly killed.⁹⁷ Within the refugee communities, the LGBTI refugees are marginalized, face prejudice, and prevent them from tapping into the available resources.⁹⁸

The social effects of criminalizing homosexuality are particularly crippling—even when they are not being enforced for a particular crime, the laws are used as “instruments of social

⁹³ Shadow Report to CEDAW by Freedom and Roam Uganda and International Gay and Lesbian Human Rights Commission, September 2010 [hereinafter Shadow Report].

⁹⁴ *Id.*

⁹⁵ Human Rights First, *supra* note at 90.

⁹⁶ *Id.*

⁹⁷ Annie Sovcik & Duncan Breen, From Persecution to Persecution: LGBTI Refugees in Uganda and Kenya, <http://www.humanrightsfirst.org/2011/08/29/from-persecution-to-persecution-lgbti-refugees-in-uganda-and-kenya/> (last visited Oct. 1, 2012).

⁹⁸ *Id.*

control” and “terms of division and tools of power.”⁹⁹ In an essence, the laws become tools of social control, power, and division because the laws privilege heterosexuality and forbid homosexuality and this notion that homosexuality is intolerable, an abomination, and an unforgivable sin becomes enforced in all other facets of society.

b. HIV/AIDS Rates Have Increased and Will Continue to do so because the Ugandan Government Leaves out the LGBT Community from the HIV/AIDS Discourse

The section addresses the HIV/AIDS prevention strategies Uganda has undertaken and how leaving out homosexuals has hurt the LGBT community and contributed to an increase in HIV/AIDS rates.

During the 1990s, the Ugandan administration took a tough stance on HIV/AIDS by using the ABC strategy: Abstain, Be Faithful, Use a Condom and saw a drop in infections.¹⁰⁰ During the ABC strategy, there was no mention of homosexuals because homosexuality is illegal stated spokesman for Uganda AIDS Commission, James Kigozi.¹⁰¹ The Minister of the State for Health, Jim Muhwezi was adamant that homosexuals did not deserve a special message because, “[t]hey shouldn’t exist, and we hope they are not here.”¹⁰² However, the infection rates in Uganda have increased to 7.3 percent today from 6.4 in 2005.¹⁰³ Sexual infidelity is one reason for the rise and Uganda’s approach toward homosexuality is another reason. One report showed

⁹⁹ Daniel Englander, Comment, *Protecting the Human Rights of LGBT People in Uganda in the Wake of Uganda’s “Anti Homosexuality Bill, 2009”* 25 EMORY INT’L L. REV. 1263 (2011)/

¹⁰⁰ <http://www.irinnews.org/Report/39429/UGANDA-Stuck-in-the-closet-gays-left-out-of-HIV-AIDS-strategy> [hereinafter Irin News].

¹⁰¹ *Id.*

¹⁰² Irin News, *supra* note at 100.

¹⁰³ John Kron, In Uganda, an AIDS Success Story Come Undone, http://www.nytimes.com/2012/08/03/world/africa/in-uganda-an-aids-success-story-comes-undone.html?_r=0 (last visited Oct. 10, 2012).

that one-third of the male respondents had sex with other males, were previously married to women, father children, and fewer than half used condoms.¹⁰⁴ A Ugandan physician speaking on the condition of anonymity said the statistics are sometimes inaccurate because when someone tests positive for HIV, the person is not asked about their sexual behavior so the statistics presume that the person is a heterosexual.¹⁰⁵ A 2008/2009 Crane Survey showed that prevalence among men who have sex with men in Uganda was at 13.7 percent.¹⁰⁶ This may be accurate because it was conducted on high-risk groups in Uganda.

Moreover, due to the policies and laws against homosexuals in Uganda, a lot of gay men are ignorant and not cognizant that having unprotected sex with members of the same sex leaves them at risk to HIV.¹⁰⁷ In fact, one gay Kampala male said the billboards (in 2006) only showed heterosexual couples and told them to use condoms which led gay men to think it was safer to sleep with each other than with members of the opposite sex.¹⁰⁸ In a July 2012 interview with Blade, Frank Mugisha, a Ugandan gay activist and executive director of Sexual Minorities Uganda (SMUG) mentioned that a majority of LGBT Ugandans are in heterosexual relationships but, “a lack of information and pervasive homophobia contribute to the spread of HIV/AIDS... There’s no information on anything so that means they’re engaging in unsafe sex and it is increasing HIV/AIDS.”¹⁰⁹

Once again, the government’s sentiments and the laws regarding homosexual conduct has

¹⁰⁴ Kron, *supra* note at 103.

¹⁰⁵ Irin News, *supra* note at 100.

¹⁰⁶ <http://www.sexualminoritiesuganda.net/index.php/news/44-uganda-new-lgbti-clinic-faces-fierce-government-criticism>

¹⁰⁷ Irin News, *supra* note at 100.

¹⁰⁸ *Id.*

¹⁰⁹ Michael Laveres, Ugandan Gay Activist Stresses LGBT Equality Key to Fighting HIV/AIDS, <http://www.washingtonblade.com/2012/07/30/ugandan-gay-activist-stresses-lgbt-equality-key-to-fighting-hiv/AIDS/> (last visited Sept. 15, 2012).

led to ignorance, misinformation, and stigmatization of LGBTI people in Uganda. While the government has tried to punish and marginalize the LGBTI population that it refuses to recognize, it has hurt the Ugandan society and factored into the increase of the Ugandan HIV/AIDS rate overall. Despite the government's attempts to keep them invisible, gay activists opened up their first clinic in May 2012 for LGBTI people in Kampala where they will receive testing, counseling, and treatment.¹¹⁰ Without any doubt, it has received government criticism.

c. LBGT Individuals are Walking Targets for Violence

In this final section discussing the harms that flow from the anti-homosexuality laws in all three countries, this section looks at the violence in Uganda against LGBT individuals and briefly discusses how the failure of the Ugandan government and private citizens to document this cases can make it appear that violence against homosexuals are nonexistent.

Violence in Uganda due to a person's sexual preference is not to be taken lightly. Like in Jamaica, they range from citizens launching vigilante attacks to law enforcement officials ignoring complaints to invoking their own attacks on homosexuals. Human Rights First, an organization that challenges America as a whole to live up to its ideals and try to fight discriminations, *inter alia*, around the world, reported some documented cases of violence and harassment in Uganda.¹¹¹ Since neither the government nor the civil society collects statistics on violence against LGBTI persons, most cases are undocumented which makes it difficult to understand the full extent of the problem.¹¹² However, Human Rights First suggests that anecdotal evidence suggests that violence and harassment for LGBTI persons in Uganda is a

¹¹⁰ Uganda: New LGBTI Clinic Faces Fierce Government Criticism, <http://www.sexualminoritiesuganda.net/index.php/news/44-uganda-new-lgbti-clinic-faces-fierce-government-criticism>

¹¹¹ Human Rights First, *supra* note at 90.

¹¹² *Id.*

serious concern.¹¹³

One of the most troubling and recent incidents is the murder of Ugandan gay rights activist, David Kato, who was severely beaten in his home with a hammer and died on his way to the hospital.¹¹⁴ The police detained two people involved in connection with the attack but ruled out homophobia as a motive; however, Kato's friends and colleagues thought the murder was motivated by Kato's sexual orientation and human rights advocacy.¹¹⁵ In June 2010, men alleging they were members of the Crime Investigation Directorate detained a gay man from a Kibuli school, the gay man has not been seen since the abduction.¹¹⁶ In April 2010, a gay man was detained, taken to a medical center, heavily medicated and declared mentally ill; that man has disappeared as well.¹¹⁷ In December 2009, a lesbian and a transgender man were beaten and attacked, most likely because of their sexual orientation and gender identity.¹¹⁸ There's also reports of a coordinator of the Civil Society Coalition on Human Rights and Constitutional Law in Kampala who received threatening phone calls after he was detained, interrogated, and released, and police raiding the office of the LGBTI group Freedom and Roam Uganda in Kampala and conducting a weeklong surveillance operation.¹¹⁹ However, these are only a few of the documented incidents. If more people were able to safely document and promulgate their stories the stories told could possibly be more brutal, there could be more lives lost, and less accountability. If the laws were repealed, there's a possibility that innocent lives would not be lost, people would be punished for their actions, and the punishment imposed would deter others

¹¹³ Human Rights First, *supra* note at 90.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

from taking it upon themselves to stage vigilante acts. Moreover, it would require government officials to uphold the laws instead of using the laws to detain, berate, abuse, and not properly investigate the deaths of LGBTI persons.

VI. Counterargument to the Main Argument

This section will address a counterargument that can be made to address the paper's main argument and a rebuttal to the counterargument using America as a prime example.

Simply stated, this paper's main argument is that the anti-homosexuality laws in Jamaica, Nigeria, and Uganda should be repealed because the laws contravene international law treaties and have societal harms. However, this argument is one with limits. One may argue that anti-homosexuality sentiments are so engrained in these people and affirmed through their religion and cultures that repealing these laws may not change the disposition toward homosexuals and thus, it would not eradicate the three specific harms discussed at length earlier in this paper. While this may be true, eradicating the laws may be the first step in the right direction toward a more accepting and welcoming society for homosexuals. A more accepting society may have the effect of decreasing violence against homosexuals, allowing them to live and identify as homosexuals without any adverse impact on their social status, and providing homosexuals with support and services for HIV/AIDS instead of ostracizing them and negatively contributing to increasing HIV/AIDS rates. The laws may be the root of all the issues as one Ugandan said the introduction of the anti-homosexuality bill is what caused the onset of mistreatment of homosexuals.¹²⁰

The repeal of laws affecting homosexuals has proven to be effective in the United States.

¹²⁰ Chris Rovzar, *supra* note at 91.

In *Lawrence v. Texas*,¹²¹ the United States Supreme Court abolished sodomy laws in thirteen states and made same-sex sexual activity legal. Only nine years later, homosexuality is beginning more acceptable in the United States. For example, nine states (Connecticut, Iowa, Massachusetts, New York, New Hampshire, Vermont, Maryland, Maine, and Washington) and the District of Columbia allow same-sex couples to marry,¹²² this year marks the first time a first sitting United States President publicly supported gay marriage,¹²³ and President Obama repealed the “Don’t Ask, Don’t Tell” policy, allowing gay service members to openly serve in the military.¹²⁴ All of this shows that after nine years of the highest court repealing sodomy laws that prohibited LGBT individuals from engaging in sexual intercourse, the United States and its citizens have been able to change its outlook on homosexuality. This is not to say it is a utopia for homosexuals in America, but it is just an example of what can happen when laws legalizing homophobia are eradicated.

VII. Conclusion

The way governments in Jamaica, Nigeria, and Uganda find and seek out individuals who may be homosexual is akin to the witch-hunt during the McCarthy era in the United States. Homosexuals are ostracized and treated like Hester Prynne in *The Scarlet Letter*, instead of wearing a large “A” on their clothing, they wear an “H” and become an instant target for death threats, mob attacks, and death sentences. They lose their jobs, housing, family, and friends

¹²¹ 539 U.S. 558 (2003).

¹²² Ben Brumfield, Voters Approve Same-Sex Marriage for the First Time, <http://www.cnn.com/2012/11/07/politics/pol-same-sex-marriage/index.html> (last visited Nov. 30, 2012).

¹²³ Carol E. Lee, Obama Backs Gay Marriage (May 10, 2012), <http://online.wsj.com/article/SB10001424052702304070304577394332545729926.html> (last visited Oct. 25, 2012)

¹²⁴ Elisabeth Bumiller, Obama Ends “Don’t Ask, Don’t Tell” Policy, <http://www.nytimes.com/2011/07/23/us/23military.html> (last visited Sep. 10, 2012).

because the government, music, and cultures of these society instill it in everyone through their words, music, and actions that homosexuality is pure evil. Because homosexuality is outlawed, preventive advertisements are not targeted towards them and they are turned away from services that affect the HIV/AIDS rate. If the laws are repealed, the disposition can start to change.

All three of these countries are religious and most of their sentiments surrounding homosexuality are heavily influenced by their faith. Consequently, repealing the laws, while helpful, would require a lot more and decades of a new frame of progressive thinking to reverse the stigmas of homosexuality that has been prevalent in these communities since they were colonized by Britain. There can be hope in the unseen so long as homophobia does not remain legal and homosexuality does not remain illegal.